

Private Admonition - Board Case No. 4, 2003. Date of Sanction: May 14, 2003. A panel of the Preliminary Review Committee ("PRC") offered the sanction of a private admonition to an attorney in Board Case No. 4, 2003, for violation of the Delaware Lawyers' Rules of Professional Conduct. The attorney consented to the imposition of the private admonition, with conditions, as offered by the PRC. The disciplinary matter was opened based upon a report received by the Office of Disciplinary Counsel ("ODC") in November 2002 from the Lawyers' Fund for Client Protection ("LFCP"), which had conducted a random audit of the attorney's law office books and records. The report identified several areas of non-compliance with the requirements of Rule 1.15 in the attorney's manual recordkeeping system, with regard to the attorney's active client trust account, as well as an inactive client trust account.

The attorney's non-compliance began with the opening of his solo law practice in 1994, and included the following: (a) monthly listings of client balances in the attorney's escrow accounts, showing client name, balance, and the total of all client balances, were not prepared from 1994 until October 2002, after the attorney received notice that the LFCP would be conducting a random compliance audit; (b) because monthly client balance listings were not prepared, the required monthly reconciliation of the total of the client balance listing with the reconciled end-of-month cash balance could not be (and was not) performed; (c) there were unidentified client funds in both the active trust account and the inactive trust account; and (d) there were client accounts with old balances, including funds held in the active trust account which should have been disbursed at least two years prior to the audit.

Included in the identified client funds in the active trust account was interest earned in the period March 2000 to October 2002 (\$578.76) that had never been transferred to the Delaware Bar Foundation under the Interest on Lawyer Trust Accounts ("IOLTA") program, pursuant to Rule 1.15(h). The attorney informed the LFCP that it had been the attorney's belief that the firm had joined the IOLTA program many years earlier, and the attorney reported this account as an IOLTA account on the Supreme Court's annual registration statements, but the bank never identified it as such and transferred the interest earned. After the November 2002 audit, the firm forwarded a check for the interest to the Delaware Bar Foundation ("DBF"). Subsequent review of the firm's accounts by its bookkeeper and certified public accountant led to a determination that the unidentified funds in the active trust account (\$1,979.34) were also interest that should have been transferred to the DBF and those amounts were then promptly transferred in full. The unidentified funds in the inactive trust account (\$1,911.95) were believed by the attorney to be earned fees transferred from a former law firm. However, because the status of the funds could not be confirmed definitively, the firm determined to hold the funds for eventual escheat pursuant to Supreme Court Rule 73.

The Certificates of Compliance filed by the Respondent in 1996 through and including 2002 stated that he was in compliance with the various lawyer recordkeeping requirements noted for each year. Each of these Certificates contained incorrect responses to certain items on the Certificate. The attorney, in explaining those responses, indicated that the registration statements and Certificates were filed based on a "general assurance" by the firm's bookkeepers that the books and records were maintained in compliance, but were not based upon specific inquiries or independent confirmation of the assurances the attorney was given.

A follow-up audit by the LFCP in February 2003 reflected that the firm's recordkeeping deficiencies were resolved and the firm's accounts were compliant with Rule 1.15. Of the six old client balances which had now been disbursed to clients (ranging in age from February 2000 to August 2001), the total was \$1,008.09. Of the two old client balances which had now been disbursed to the Respondent (dated July 2001 and August 2001), the total was \$740.18.

In accepting the PRC's offer, the attorney consented to a private admonition for violations of **Rule 1.15(d) and former Interpretive Guideline No. 2** (setting forth detailed and specific requirements for the maintenance of attorneys' books and records and handling of practice-related funds); and, with regard to the incorrect responses on Certificates of Compliance for 1996 through 2002, **Rule 8.4(c)** (providing that it is professional misconduct for a lawyer to "engage in conduct involving ... misrepresentation") and **Rule 8.4(d)** (providing that "[i]t is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice).

The PRC considered the following mitigating factors: (1) the absence of any prior disciplinary record; (2) the attorney's full and free disclosure to the disciplinary authorities and cooperative attitude; and (3) the attorney's retention of a certified public accountant, and his prompt efforts to completely resolve the recordkeeping and accounting deficiencies, which did not involve any failure by the attorney to have performed the required monthly reconciliations between bank statements and check register balances for his active trust account. In aggravation, the PRC considered (1) the pattern of record-keeping deficiencies and incorrect responses to items on the Certificates of Compliance over a number of years, and (2) the attorney's substantial experience in the practice of law.

The sanction of a private admonition also included the following conditions: (1) payment of ODC and LFCP costs; and (2) for 18 months following the imposition of this sanction, the attorney was required to provide semi-annual reporting from a certified public accountant to the ODC verifying the attorney's compliance with Rule 1.15.